

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3546 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AHMEDABAD MUNICIPAL CORP.

Versus

MAYUDDIN HASANBHAI MALEK

Appearance:

1. Special Civil Application No. 3546 of 1996
M/S ANAND ADVOCATES for Petitioner No. 1
MR MB GANDHI for Respondent No. 1
MRS TRUSHA M GANDHI for Respondent No. 1
MR GM AMIN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2004

ORAL JUDGEMENT

Heard learned advocate Mr. D.C.Raval for the

petitioner-Corporation and learned advocate Mr. M.B.Gandhi appearing on behalf of the respondent-workman.

2. In the present petition, the Corporation has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 104 of 1983 dated 13.9.1995 wherein the Tribunal has awarded the Grade Rs.330-560 to the respondent workman w.e.f. 27.1.1983 with all consequential benefits. Initially, this Court on 30.8.96 has issued rule to be heard with Special Civil Application No. 1102 of 1996 and ad interim relief has been granted which has been subsequently confirmed by this Court on 5.10.1996.

3. Learned advocate Mr. D.C.Raval appearing on behalf of the petitioner Corporation has raised contentions before this Court that the posts of Fitter, Steam Road Roller-cum-Driver-cum-Fitter, Tractor Driver-cum-Fitter, Excavator Operator-cum-Fitter are different in nature and responsibility and therefore, they are not comparable posts and therefore Tribunal has committed gross error in awarding the scale of Rs.330-560. He also submitted that respondent workman has not to work except the work of Fitter and therefore he is not entitled the benefit of the grade Rs.330-560. He also submitted that the scale has been revised by the Arbitrator Mr. I.G.Thakore w.e.f. 1.1.1976. At that occasion no grievance has been voiced by the respondent workman and after some time the grievance has been voiced by the respondent workman. Therefore, also that aspect is not considered properly by the Tribunal. He also submitted that oral evidence of witness Jagdish Chand vide Exhibit-20 was examined. Even his evidence is not properly considered by the Tribunal. He also submitted that Tribunal has committed gross error in granting retrospective effect from 27.1.1983. Therefore, the award is required to be interfered by this Court, as the Tribunal has committed gross error in passing such award. Learned advocate Mr. Raval has submitted that the present respondent has already retired from service.

4. The learned advocate Mr.. M.B.Gandhi appearing on behalf of the respondent workman supported the award and submitted that Tribunal has rightly considered the case of the respondent and granted the relief in favour of the respondent. According to his submissions, no error has been committed by the Tribunal.

5. I have considered the submissions made by both the learned advocates. I have also perused the award passed by the Industrial Tribunal and also the evidence

of witness of the petitioner and order passed by the petitioner-Corporation in favour of the respondent workman and statement of claim and written statement submitted by the respective parties before the Tribunal. The question is that, initially Hon'ble Arbitrator I.G.Thakore has fixed the scale for all kind of Fitters at Rs.260-430. That scale has been revised by the Corporation considering the nature of work performed by the Fitters which require some additional work over and above from fitter work and they put in scale of Rs.330-560. This was the order of revision of pay by the Corporation and not by the Hon'ble Arbitrator. On the basis of this revision of pay for the post of Fitter; Driver-cum-Fitter, Tractor Driver-cum-Fitter, Excavator Operator-cum-Fitter and Stem Road Roller-Driver-cum-Fitter are getting salary in the scale of Rs.330-560, but the present respondent who was working as a Black Smith-cum-Fitter, the said scale has been denied to him on the ground that respondent has not to perform additional work as required by the other Fitters. This aspect has been examined by the Tribunal on the basis of the evidence on record and come to the conclusion that present respondent is required to prepare the instruments. He is also required to perform repairing work and also he is required to work on road in pipelines. These are all additional work which are to be performed by the respondent workman which has been taken into account by the Tribunal. The Black Smith-cum-Fitter has to work by preparing the instruments which are helpful in the work of fitter like, Drill, Pana and other instruments and also work of road when the pipeline breaks and he has also to repair the instrument if it is required to be repaired by the Corporation. These facts are on record on the basis of the evidence of the respondent workman. The evidence of witness of Shri Jagdishchand Dungar Singh (Exhibit-20) which remain without cross-examination, even though that witness has also admitted that respondent workman has to repair the pipeline which are found broken and also required to repair wall and other work, but he pointed the difference in duties between the post of Fitter and Road Roller-cum-Fitter.

6. I have perused the award passed by the Tribunal. The Tribunal has considered the additional work and on that basis, the salary has been revised in respect of other fitters. The respondent workman is also working as a Black Smith-cum-Fitter, and therefore, the same treatment has been given to the respondent workman by awarding the scale of Rs.330-560. The Tribunal has also considered the fact for giving retrospective effect and

not making the retrospective effect from the date of demand, i.e. from 1.1.1974 but instead of that the retrospective effect has been given from the date of reference. It is necessary to note one submission which has been made by the learned advocate appearing on behalf of the Corporation before the Tribunal which amounts to the admission to the extent the request made by the learned advocate Mr. Sheth who appeared on behalf of the Corporation not to give retrospective effect from the date of reference but to give the retrospective effect from the date of decision or date of award, meaning thereby that such submission must have to be made after considering the case of the respondent.

7. After considering the reasoning given by the Tribunal and considering the submissions made by learned advocate Mr. D.C.Raval, according to my opinion, Tribunal has not committed any error while passing such award. Tribunal has rightly appreciated the evidence on record. This Court cannot reappraise the same evidence again while exercising the powers under Article 227 of the Constitution of India. Tribunal has not committed any error. There is no procedural irregularity committed by the Tribunal which require any interference by this Court while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated.

(H.K.Rathod, J)

Jayanti*